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PAULUS ZACCHIAS ON MENTAL
DEFICIENCY AND ON DEAFNESS*

PAUL F. CRANEFIELD AND WALTER FEDERN

The Rockefeller University
and
The New York Academy of Medicine
New York, N. Y.

PAULUS ZACCHIAS (1584-1659) was a papal physician and the author of the first extensive modern treatise devoted to medicolegal problems. The treatise contains a chapter that deals with mental deficiency which is followed by a chapter dealing with deafness. These chapters are offered in translation because they form a very useful summary of the opinions about mental deficiency held by the classical authorities upon whom Zacchias relied. The translation follows the first edition: Paulus Zacchias, *Quaestiones Medico-legales* [Rome, 1621], Tomus Primus, Liber II, Titulus I, Quaestio VII (De Ignorantibus, Fatuis, Stolidis, Obliviosis & Memoria Orbatis) and Quaestio VIII (De Mutis and Surdis).

The footnotes to the text of the translation require special explanation. The two chapters which we have translated contain very condensed references to Zacchias's sources. These references have been

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expanded and appear as footnotes to the translation. Even in their present form they fall short of a high standard of bibliographical detail. Nevertheless they will lead the reader to the source of the material more readily than the original citations. The first footnote may be taken as an example. Zacchias had "Card. comm. 6. Aphor. 51." We have changed the text to read "Cardanus"¹ and have added a footnote which reads "Cardanus (Girolamo Cardano, 1501-1576), *Commentarius in Hippocratis Aphorismos*, Liber 6. Aphorismus 51, *Opera*, 1663, vol. 8, 523, 1st ed, 1564." This expanded citation more fully identifies the author, gives the exact location of the passage, gives the date of the first edition of the work referred to, and also notes where the passage may be found in the 1663 edition of the *Opera* of Cardanus. To give full details would make the annotations excessively long but the present annotations are much more useful than the original citations given by Zacchias. An occasional footnote identified by a number and a letter (e.g., 3a) is used to add a citation or comment which does not appear in the original text. In those footnotes which have been designated by numbers only, all material is essentially an expansion of Zacchias's citation, with the occasional addition of the source of a modern translation of a quotation. All of the text has been translated but we have not translated the summaries which precede each chapter since they add little if anything to the text.

The text is straightforward and does not require extensive commentary. There are some aspects of it which are nevertheless of special interest. References to mental retardation are not at all common in the medical literature prior to the time of Zacchias; nor can one say with certainty that the condition was regarded as a clinical entity prior to that time. It thus seems worthy of mention that Zacchias is in fact discussing the phenomenon which we would call mental deficiency or mental retardation. Apart from some passages about those who have suffered from a failure of memory, the text deals with persons of inferior ability to learn. Zacchias is explicit, for example, in saying that those about whom he writes ought not be called crazed. Many of the earlier authors who mention diminution of intelligence lump together congenital mental deficiency with a great variety of acquired conditions including senility, postpsychotic apathy, and deterioration following prolonged and severe epilepsy. The fairly clear-cut limitation of the condition by Zacchias is thus important in itself.

Zacchias offers a rather simple and unsophisticated classification of mental deficiency according to the severity of the defect. The least severe degree he suggests calling obtuseness; he later indicates that the obtuse may be taken as having no more judgment than a child of 14 years. These "slow learners" may be allowed to marry; interestingly he supports this opinion by a ruling of the Rota. He also holds that the obtuse cannot be held wholly free from responsibility if they commit crimes. A more severe grade of mental deficiency is illustrated by "those who are properly called fools by all." These, Zacchias says, seem to exist below the condition of human nature. They cannot be instructed in anything but trifles, but they can speak, even though their speech may be foolish and childish. The most extreme form of the condition is represented by persons Zacchias describes as mindless. Such persons are excused from the penalties of the law if they commit crimes and they are also debarred from civil actions, including, by implication, marriage. Those of the second grade ("properly called fools by all") may perhaps marry, but this must be left to the discretion of a judge.

It would be an exaggeration to say that the classification given by Zacchias corresponds in any precise way to the later classification into moron, imbecile, and idiot, but a rough comparison of those classes with the *obtuse*, the *foolish*, and the *mindless* is not entirely inappropriate. While Zacchias uses his classification largely in the interests of deciding legal questions, he also makes it clear that he was aware of the possibility of alleviating the condition of the obtuse by education.

Zacchias's chapter on the dumb and the deaf offers some curious and interesting ideas. That congenital deafness leads to defective intelligence has been known since the time of Aristotle; even today it affects intelligence unfavorably unless special educational procedures are applied early and skillfully. The congenitally deaf are to be treated as being in the class of the most severely retarded and "regarded in all things like as infants and madmen." They cannot be allowed to make a will even if they wish to make a pious bequest!

By far the most important statements in the two chapters are those concerning the reasons why the congenitally deaf ought not to be allowed to marry. Quite apart from various religious objections, Zacchias says that the congenitally deaf should not be allowed to marry because "there is evidence that they beget children like themselves,

and now it profits the commonwealth that sound and in every respect perfect people are born, not so strikingly impaired ones." This statement is peculiarly important. It means that Zacchias was aware of the hereditary factor in congenital deafness and it means that he was willing to adopt a "eugenic" position. In the interest of the commonwealth, he says explicitly that those whose children may be imperfect should not have children. This is not, of course, a particularly early statement of a eugenic point of view. What is interesting and important is that Zacchias, holding this view, did not apply it to the mentally retarded of *any* degree. He did debar from marriage the severely retarded, but he did so on religious grounds (inability to understand the sacraments), not on eugenic grounds. It seems clear that Zacchias, who did recognize a hereditary factor in deafness and who did believe in the application of eugenic concepts, did not believe that heredity plays a major role in the transmission of mental deficiency.

Without granting Zacchias any extraordinary sophistication we may well note that there is no doubt or difference of opinion among modern geneticists about the existence of hereditary factors in deafness while there is a great deal of doubt and controversy about the role, if any, played by heredity in mental retardation.

QUESTION VII

ON THE IGNORANT, FOOLISH, STUPID, FORGETFUL, AND BEREFT OF MEMORY

The impairments of reason with which we have dealt before are not properly numbered among the dementias. Among the dementias proper (or among those persons who do not possess the sound reason required by the human condition) the first place is taken by those persons commonly called fools. There are several kinds of fools, however, according to the greater or lesser slowness and indolence of the mind and intellect. Cardanus¹ set up only two kinds of folly, in one of which the victim does not recognize the things which should be recognized. Such persons may be those whom the jurists call witless (Ripa)²; according to Cardanus they are called rude because everything they do or say is done or said without grace or wit. For that reason the ancients called people of this sort by the term blite because it is a herb of dull and insipid taste and has no pungency (as Pierius Valerianus³ reports). Hence this herb is rightly termed foolish by Martial^{3a} in this

poem: "That insipid beet, the noon meal of artisans, may acquire flavor."

The other kind of folly according to Cardanus is that kind in which the victims do not reason correctly from things which they have recognized, and he would limit the term folly to this sort. But the kinds of folly and of fools are far more differentiated. In some persons one merely discerns some laziness and indolence of intelligence which renders them unfit to obtain by the use of their intellect things which other people obtain easily (either on their own, or with nature dictating or by a little application). Those things include the first beginnings of education, some mechanical skills, manners, some civic regulations, the civil care of one's own body, the natural cunning common to all, and alacrity in domestic affairs. Such persons we call ignorant and unlearned, not because they are the opposite of persons whose knowledge comes from a skillfully acquired education, but because (as I have said) they are incapable of arriving at a natural and less than mediocre knowledge of things. Persons like these formerly were called Boeotians, which was the origin of the proverb, "a Boeotian intelligence," for a man of gross and dull intelligence; whence Horace:⁴ "You would swear he was born a Boeotian in thick air."

Such persons might better be called obtuse, and this kind of folly might better be called obtuseness, as Cardanus¹ calls it. Among the jurists, the Rota⁵ calls these undiscerning and witless. This ignorance or obtuseness is the rudiment and beginning of folly, but it is not truly folly and, as Galen⁶ asserted, people should not be called fools on account of it. Plato⁷ said that ignorance is dementia of the soul, and if we say that he spoke of this ignorance then I should say that Plato meant nothing but what we have said above.

Persons afflicted with obtuseness of this sort are reckoned among those whom we ordinarily term simpletons or people of a coarse grain or gross mind; in addition we call them slow, dolts, buffoons, clowns (and about these see Budaeus⁸), and by comparison blocks, etc. Plautus⁹ reviews terms of this sort very nicely:

Of all the silly, stupid, fatuous, fungus-grown, doddering, driveling dolts anywhere, past or future, I alone am far and away ahead of the whole lot of 'em in silliness and absurd behavior!

In imitation of which Terrence¹⁰ says:

Any one of the terms used for a fool is a cap for my head, block-

head, wooden-pate, ass, leaden-wit—not one of them fits him, for his folly is in size too large for any of 'em.

But while we are dealing with terms, it should be called to mind that the word crazed is by no means appropriate to describe a fool, even though it is used by a number of jurists (Decius,^{11, 11a} Thesaurus¹²) unless the term is understood in a broad manner or applied to fools of the third kind. Neither should fools be called insane, as Bartolus¹³ declares. A number of jurists divide fools into those who have as much judgment as a child of 14 years and those who in judgment hardly equal a 10-year-old child (Thesaurus,¹⁴ and of the physicians, Aetius¹⁵). It is the former group to which the first class of folly, termed by us ignorance and obtuseness, belongs. Ripa² meant the same when he said that among fools there are some who are only rude and obtuse while others are entirely mindless and without sense. But of the jurists, Menochius¹⁶ distinguished more diligently between the kinds of fools. He does not proceed by our method, though, but by one which seemed to him to serve his cause better.

The first kind of folly does have its signs: for ignorant persons of this sort or (to use the word of the jurists) macaroons, are known by the fact that they are of slow intellect in all things, whence they are quite incapable of learning even childish elements of education. They are also devoid of natural courage, wherefore they stand in awe of their elders' frowns and threats even after attaining manhood. This vain awe of their elders causes them to dread to execute things which are not only permitted by their greater age but are for that reason exceedingly becoming to them to do. For instance, Melitides, having taken a wife did not touch her lest she accuse him before his mother, as related in the Adagia.^{16a} Anything whatever is palmed off on them quite easily, and they are persuaded of vain and infeasible things by what sometimes deceiving friends have said. Persons kept down by this ignorance also, as I have said, give witless answers to questions. To say it in a word, where an effort of the intellect is needed, they perform everything slowly and without measure, and not at the proper occasion or time. On the other hand, they excel in an exquisite memory of things, as Fracastorius¹⁷ reports. This as a rule happens naturally so that those who are slow of intellect are most retentive of memory, as is known to the philosophers, and noted among the jurists by Tiraquellus.¹⁸ Though on the whole they are of moderate judgment, at times they

have in certain things a not mediocre judgment as, among the jurists, Corsettus¹⁹ notes.

It should be noted, however, that this defect as a rule is innate, while the other kinds of folly usually spring from both old age and disease. Though this kind of folly, called ignorance or obtuseness, can occur in old age and in disease, in such instances it always tends toward the worse, that is, toward perfect folly or toward death, as in cold diseases, whenever the sick already are close to death.

Besides, since folly is nothing but a coldness of the brain, having its origin in paucity and lack of heat and spirits (Galen²⁰ and Aetius¹⁵), it is clear that the brain's cooling or lack of heat can have many grades, whence a greater or a lesser faculty will arise. In the first grade of folly, therefore, it should be believed that there is in the brain a moderate cooling compared with the others (in whom however the coldness always increases, while the heat itself dwindles). To those, therefore, who attain this grade only, many of the sanctions of the laws and many decrees of the jurists ought not to apply. Indeed, though these do not obtain perfect use of reason, they are not alien from it [reason] to such a degree that they cannot apprehend by long use some things familiar to normal people. Thus in certain cases I do not see why they ought to be restrained from testifying, especially about those things which they have seen since, as I have said elsewhere, they may have an exquisite memory. About things which they have heard, some doubt could be allowed, since a greater soundness of reason is required in signifying the latter than in signifying the former, for the sense of sight is more direct and moves the imagination even more than the sense of hearing does, as has been said earlier.

I think they are rightly allowed to make a will, for of these I deem that Decius²¹ correctly understands the teachers, moreover, the Rota²² makes it plain by what follows that it speaks of this sort of fool. No less does it seem to me in accordance with the law that such persons are by no means prohibited from entering into religion and from making profession, because whatever use of reason there is in them can be adequate to these things, for a dementia that hinders profession has to be such as to take away every use of reason. (The same Rota.²³)

Nor do I believe that marriage should be forbidden to these persons, because even with such obtuseness of intelligence continuing unchanged they can obtain the power of the sacrament and the goal of

marriage. This also is the view of the same Rota.²⁴ Nay, in my opinion, they can more easily be admitted to marry than to enter into religion, for in marriage nature itself cooperates somewhat and teaches ignorant persons also. Now from other things which require soundness and perfection of the intellect (for instance ordination, succession to fiefs, administration of a guardianship or of a public office) they should be debarred by right, it seems.

Furthermore, whether they should be excused for crimes can be difficult to decide. It is a fact that these persons can easily apprehend the nature of crimes at least from habit, even if they cannot do so from intellective cognition, since these children, especially those close to puberty, with whose intelligence we said the intelligence of these persons should be put on a par, easily recognize that crimes are bad by their own nature and therefore should be shunned. Yet it would seem that it should be said that just as children of this sort are excused for most things, so fools of this sort ought to be excused, since we stated that they have no greater judgment than the aforesaid children.

I hold the opinion that for a few crimes fools should not be excused the same way as children are; I am speaking of these fools only, not of the others. The reason is that though we like to compare these fools to children of fourteen years with respect to the use of reason, fools can advance in some things through habit since the power of habit is very great and it is capable of instructing not only these fools but even animals devoid of a rational soul. Well, then, if children close to puberty are able to deceive (*lex Pupillum*, i.e., *Corpus Juris, Digesta, Liber I, Tit. XVII*,²⁵ *Num. CXI; Zabarellus*)²⁶ much more should these persons be considered able to deceive. Now where deceit is present, and malice, guilt takes effect. Guilt, however, ought to be accompanied by punishment, by an argument opposite to that which states that where there is no guilt, there is no punishment (*Angelus a Gambellionibus*, quoted by *Zilettus*).²⁷ In the same way, where there is no deceit no crime deserving of punishment is thought to exist either (*Menochius*).²⁸

There follow in the second grade those persons who are properly called fools by all, both by the jurists and by physicians (for extremely few or, rather, none I know of has expressly mentioned the first sort). These persons not only have indolent and slow intellect, but seem to exist below the condition of human nature with respect to the use of reason. They are hardly taught to speak and are known to be incapable

of those things which human nature itself is wont to dictate on its own. Neither do they advance in reasoning with age, but they are distinguished from seven-year-old infants by nothing but their speech, in which they seem for a while to be prompter. But by their very speech they make plain that they are fools, whence they have therefore been called fools (*fatui*), because by talking (*fando*) they show their imperfection (Bartolus).²⁹ This sort are of an altogether childish intelligence and delight in childish things, as for instance: "To play at odd or even, to ride on a long reed [hobby-horse]." ^{29a}

Otherwise they are thought to be incapable of anything and can not be instructed in anything save some trifles; for they have very little intellect and are also devoid of memory. That is because the brain's coldness, and its lack of spirits, is both greater and more constant in these persons: for folly is nothing else but either diminution or loss of memory at the same time as of reason, as Paulus³⁰ holds. Consequently it is of these that the dictum of the jurists should be understood, viz., that a person who has a disordered memory should be presumed to be a fool (Alexander;³¹ Grammaticus;³² Caevalus³³). For in these persons the natural heat of the brain is so modest that it cannot serve any function of the brain. Hence we say correctly in common speech that a fool has no brain, as Galen³⁴ attests. Plautus³⁵ says facetiously: "Oh, no! You cleaned out all the brain from my cranium!"

In worse condition, though, are those persons in the next class, in whom neither any reason nor any memory at all is found. They reveal their folly both by words and by deeds, do not learn anything at all, nor advance in anything by civil habit, and in sum do not tell good from bad, appropriate from inappropriate, vice from virtue. (This does not take place in the same way as it does in the others about whom we spoke above). Therefore they are properly called stupid and mindless, and metaphorically stones, inasmuch as they seem to be devoid of all sense like stones. This term we use whenever we charge somebody with stupidity, as Plautus³⁶ did facetiously: ". . . for no flint's as foolish as you, that love her," and: ³⁷ "My master is circumcompassed with an elephant's hide, not a human being's and he has no more sense than a stone. *P.* I know that, myself."

This affection was called by the Greeks *anomia*, just as the one mentioned earlier was called by them *morosis*, though in the authors both

terms are accepted for the same affection. However, to the same extent as those mentioned earlier, these persons—though both classes are at times affected by greater or lesser folly, since some gradations of both ailments according to severity are allowed—are altogether rightfully debarred from all civil actions and are entirely excused for crimes.

About the former, though, it should be seen whether they can marry, since they preserve some shadow or rudiment of human intellect and are not entirely devoid of memory. Nor do they entirely lack human sense and passions like those whom we reviewed before. And because, as I have said repeatedly, the range of folly of this sort is great, I deem it correct to leave these decisions to the discretion of a judge, along with many other problems that can arise concerning this class of fool.

Now there can be doubt whether such persons ought to be permitted to draw a will. The reason for the doubt is that in him who disposes of his property an entirely sound mind is not required, but rather it is required that he should not be deranged. (Joseph Ludovicus;³⁸ and the Rota.³⁹) This very matter though, like the things mentioned earlier, I remit to the discretion of the judge, for he will easily discern whether a fool is so devoid of sense and human passions that he by no means recognizes those who are closely connected with him, and who are his benefactors, or contrariwise; and so the judge will easily state a just opinion.

After the fools there are persons who are called forgetful, and wanting in memory. Between them, however, it is meet to make an important distinction. Let us say, then, that by “forgetful persons” we understand those who retain the memory of things with difficulty. By “persons wanting in memory,” however, we mean those who do not retain any memory at all of things that have passed, either a long time or a short time ago, at least while they suffer from this condition. I prefer to distinguish them even though they seem not to differ except in degree, because to the latter group many things apply that by no means apply to the former. The latter should be regarded in every way as nothing less than fools of the second grade of folly. The reason is that as soon as the affection by which memory is impaired intensifies greatly, reason is also ruined (Galen;⁴⁰ Forestus⁴¹). It is from a dwindling of memory at the same time as of reason that folly arises, as I have already said.³⁰

Now this affection as a rule arises from long and severe diseases, as Pliny⁴² relates of Messala Corvinus. Pestilential diseases also provoke this illness; Lucretius relates that it occurred in a severe plague:⁴³ "And there were others who fell into oblivion of all things, so that they could not even tell who they were." Among the jurists, Menochius⁴⁴ has noticed this.

Besides, since in the former group memory has not been impaired in a manner that also impairs reason it should be said that many things may be allowed them that cannot be allowed the latter. The former ought not to be prevented from drawing a will; the latter contrariwise. The former should not be prohibited from entering into religion and making profession, the latter very much so. The former should be permitted to marry, to contract, to obligate themselves, to administer their property, and other things of this kind; the latter by no means. In some other things, though, the former perhaps should not be admitted (for about the latter there should be no question). These things I would lay before the jurists, who are to see whether such persons can be ordained licitly, since because of this defect they are not equal to many things to which a person who is to be ordained ought to be equal. The jurist may also determine whether these persons ought to be admitted to the exercise of public offices, since in public office both prudence and an exquisite memory of things are needed. Finally, the jurists may determine whether these are capable of testifying; for how would they be capable of doing so, who remember the things they have seen and heard either not at all or with the greatest difficulty? Wherefore, since it is mostly old people who are subject to this defect, may they notice how cautiously old people are admitted to testify, especially of things that have passed a long time since. Furthermore, since we have been talking of forgetfulness, let us discuss that question of the jurists in which they inquire how much time it takes for forgetfulness to be induced. Although a number of jurists (quoted by Menochius⁴⁵) have tried to define the limit of forgetfulness on this point, it is plain that they have exerted themselves in vain. The reason is that there are a great many things that make people more and less forgetful, namely the temperament of the body and especially of the back of the head, sex, age, the constitution of the parts, the quality and the regulation of one's life, the exercise of memory itself, and other things of this sort. For with respect to sex it is clear, for example, that women

are more forgetful than men, as the same Menochius⁴⁶ notes. This should be regarded as happening in consequence of the moister temperament of the former, which is fluid and less capable of retention; hence forgetfulness will be more easily induced in a woman than in a man. With regard to age, it is known that old people have very little memory of things; for this is first encroached upon by old age, as shown by experience and as Seneca notices,⁴⁷ and before him Aristotle.⁴⁸ But for these things he who wants more may read Mascardus.⁴⁹ As for temperament, persons who have a dry one have a more retentive memory, persons who have a moist one have a less retentive memory (Aristotle⁴⁸ and Averroes⁵⁰); as a result of which it can hardly, if at all come to pass that people are strong in judgment and memory at the same time (Plato,⁵¹ Forestus⁵² and, of the jurists, Caevalus⁵³). Regarding the conformation of the parts, those who have larger upper parts than lower parts are less strong in memory, as Aristotle⁴⁸ testifies. Finally, with respect to the quality of one's life, those who attend to affairs are easily forgetful, as the same Menochius witnesses.⁵⁴ Forgetfulness, then, can be induced more easily or with more difficulty, according to the diversity of these and similar things, to which the condition of the deed and of the event is to be added, since extraordinary deeds and great things are not presumed to be readily forgotten (the same Menochius);⁵⁵ and forgetfulness is more easily induced in the case of a strange deed (Verallus);⁵⁶ consequently the same Menochius prudently determines that this part of the question is remitted to the discretion of the judge, who must however take into consideration both these and many other things.

QUESTION VIII

ON THE DUMB AND THE DEAF

We must consider the dumb and deaf separately, for it seems that we cannot correctly include them among the mindless or among the fools, and yet it cannot be truly affirmed that they are of sound judgment. For the present we speak of the dumb and deaf who are such from birth. About the others it is wrong to have doubts: for in my judgment no distinction should be made between them and those persons who both are of a sound mind and hear well and speak (provided you make one little bit of exception, as you will find at the end of this *Question*).

Besides, everybody knows that those who are deaf from birth are at the same time dumb. However, it has never come to my knowledge that one dumb from birth hears, so that conversely he who is dumb from birth at the same time is also deaf. My opinion is seconded by the *lex Discretis*⁵⁷ and the gloss there on the word *raro*.⁵⁸ Now the cause of both facts should be believed to have its origin in a dwindling of the nerves that are common to both senses. So Andreas Laurentius⁵⁹ judges after having denied the cause adduced by others, which is that the deaf are also dumb because they cannot learn a language or speak. Though if one concedes another cause of deafness from birth (about which Hieronymus Fabritius⁶⁰ writes), it would seem that this cause adduced by others [and denied by Laurentius] could act. That cause, about which Fabritius writes, is some thick extra tunic which has grown in the ear in front of the membrane that is called the tympanum; perhaps such deafness need not hinder speech. Consequently, I have not been greatly astonished at what Vallesius⁶¹ relates about a friend of his, a monk, who taught those deaf from birth to speak. I do not believe that this could succeed with all the deaf, but with those about whom Fabritius writes, I believe it could.

Now while it should by no means be questioned that all the dumb and deaf from birth are deficient in prudence and vigor of mind, yet there are among them those of greater or lesser judgment, prudence, and vigor of mind, as of the jurists, Bartolus⁶² maintains. But speaking of them as a whole, the same jurists, for instance Bartolus,⁶³ Cujacius,⁶⁴ Vantius,⁶⁵ Farinacius,⁶⁶ assert absolutely that one who is dumb and at the same time deaf from birth is put on a par with an infant and a madman, and is treated as absent. The distinction made by a few, however, that those who understand by nods do not lack prudence (Bartolus),⁶⁷ should not be understood to mean a prudence sufficient to render them fit for all things, but only for a few things of minor moment. Not without an evident reason, however, such a person is put on a par with a madman, which is double, one sensory, the other physical [physical here seems to be equivalent to our psychological]. The sensory one is the dwindling of the nerves, on account of which they are hindered both in hearing and in speaking. Now this dwindling presupposes a dwindling of the brain, which is the instrument of the intellect, whence without doubt intellection deteriorates, as it happens in madmen and in the mindless.

For that dwindling of the nerves is the true cause of both defects (rather than that the hindered hearing takes away speaking) is demonstrated by the very babes who hear most exquisitely yet do not speak, since they are hindered by the softness of the nerves that serve speech, which owing to their softness are not capable of being moved in order to articulate the voice. On the other hand, if you let a child that hears well hear nobody speak, as long as he can articulate and speak on his own, he will speak in his own manner when he has grown older. It is not necessary, then, that he who hears well also speaks. Nor, on the other hand, is it necessarily true that he who hears nobody speak does not speak because he cannot learn to speak.

The other cause, which is physical, I deem to be the fact that human intellect is perfected from day to day. On its own, the intellect is rude. It can be perfected only by habit and by learning, which is obtained from hearing. As a result, deprivation of hearing makes the intellect ruder; and if the deprivation of hearing is innate, it prevents instruction of the intellect.

It should be noted that this imperfection of the intellect in those who are dumb and deaf from birth is entirely irreparable. It cannot be hoped under any circumstances that they will obtain a sounder mind. According to their age, though, they can be said to have greater or lesser intellect, so that a number of things ought to apply to them when they are younger which perhaps will not apply when they grow in years. Yet they should be regarded in all things as infants and madmen, as I said above; for the perfection of intellect which they require on account of their age is not so great that they can ever be equal to anything.

Since, then, the imperfection of their intellect is irreparable to such a degree: just as infants and children, as long as they are of that age, and madmen, as long as they persist in their madness, are prohibited from all actions, the same opinion should be held about the dumb and the deaf (the *lex Discretis*, i.e., *Corpus Juris, Codex, Liber VI, Tit. XXII, Num. X*).⁶⁸ In particular they are not permitted to make a will, as is found in the same law and in the *lex Qui in potestate*, (i.e., *Corpus Digesta Liber XXVIII, Tit. I*,⁶⁹ *Num. VI*) *surdus*⁷⁰ (Decius;⁷¹ *Nepos a Motalbano*);⁷² which fact the teachers amplify to make it the procedure even in the case of pious bequests (*Baldus*).⁷³ They cannot contract a marriage (*Abbas*,⁷⁴ *Jason*⁷⁵) and much less enter into religion;

(Brunellus⁷⁶ and others quoted by him; he himself, however, maintains the opposite).⁷⁷ It seems troublesome, though, to advocate his opinion, since such persons (even those who are of a more vivacious nature and endowed with some prudence) except for a rude and gross understanding of things which they have by nature, cannot obtain the power of marriage and the end and the purpose of that sacrament, to wit, the procreation of children for the glory of God. Now nature by itself does not dictate this, unless implicitly, but merely the enjoyment of coitus and of the expulsion of semen. Therefore animals, to which these persons are akin with respect to their understanding, copulate to no other purpose but in order to excrete semen, just as they also urinate and defecate, goaded by the quantity of urine and of feces, as Galen⁷⁸ teaches. Since, however, in my opinion a person who contracts a marriage, or whatever else, ought to recognize the true and real purpose of this action or contract, and since these persons do not recognize this purpose, but rather another, feigned one, which is insinuated to them by nature, I do not see how they ought to be permitted to contract a marriage; for one does not contract unless he wants to do so, and with the dwindling of the will the assent ceases. With the purpose not being recognized it cannot be said that one acts by choice and voluntarily; it is by chance, then, that he will contract, since his action lacks an end. Not to mention the fact that the deaf and dumb ought to abstain from marriage not only because they do not understand the end of marriage, but also for the good of the commonwealth, because there is evidence that they beget children like themselves, and it profits the commonwealth that people sound and in every respect perfect are born, not such strikingly impaired ones. Now apart from these things they are restrained from testifying, as is evidenced by Mascardus.⁷⁹

Next, about those whose dumbness and deafness is acquired, one could hesitate whether they should be regarded as fit for all things. First about the merely dumb, who have lost their speech by accident, in my judgment one need have no doubts whatever about their abilities; this opinion is supported by the same *lex Discretis*,⁸⁰ *Ubi autem*. Their dumbness does not prevent them from doing whatever things other people can do. This has been asserted in the case of the limits of donation by the text in the law *Qui id quod*, (i.e., *Corpus Juris, Digesta, Liber XXXIX, Tit. V*,⁸⁰ *Num. XXXIII*), *Mutis*,⁸¹ and by the gloss there which Maranta⁸² adduces. One chance, though, you are to except,

namely when the dumbness results from a defect of the brain; for such dumbness is always attended by some folly and diminution of intellect or at least ignorance; these persons, then, should be dealt with more cautiously,

Now about the deaf, doubts are occasioned by what the philosopher has said, from whom Valescus⁸³ borrows it. This is that hearing is the gate of the mind; thus, complete deafness without diminution of mind and intellect seems hardly to occur. In my judgment, in people of rude intelligence and a base condition, the intellect suffers greatly on account of their complete deafness; of others, inasmuch as they were very much in their right minds before their deafness, though on account of their deafness henceforth it [the intellect] is injured, I would say that it is not injured to such a degree that they need to be forbidden anything on account of this cause; the same *lex Discretis*⁶⁸ favors this view.

REFERENCES

1. Cardanus (Girolamo Cardano, 1501-1576). *Commentarius in Hippocratis Aphorismos*, Liber 6, Aphorismus 51, *Opera*, 1663, vol. 8, 1st ed., 1564.
2. Ripa (Giovanni Francesco de Santo Nazario de la Ripa, 14??-1534). In *legem ex facto. Digesta*, Liber 28, tit. 6. De vulgari & pupillari substitutione, lex 43, Num. 82.
3. Pierius Valerianus (born as Giovan Pietro della Fosse, 1477-1560). *Hieroglyphica*, Liber 58. Fol. 423vo of the ed. of 1567, 1st ed. 1556.
- 3a. Martialis. *Epigrammata*, Liber 13 (Xenia), 13. Ker, Walter R. A., transl. Loeb Classical Library.
4. Horatius, *Epistularum*, Liber secundus, Epistula 1, line 244.
5. Decisiones Sacrae Rotae Romanae, Melitensis Testamenti, Friday, February 17, 1612, coram Manzanedo. *D. Prosperi Farinacii I.C. Romani Sacrae Romanae Rotae Decisionum ab ipso selectarum, nec unquam alias impressarum Tomi quatuor*. Aurelianae 1621, vol. 1, pp. 440-41. Reverendissimo P.D. Manzanedo. Meliten. Testamenti. Veneris 17 Februarij 1612. (Argumentum. Testamentum a demente conditum non valet, & qualis debeat esse ista dementia, de quo tempore, & quomodo probanda.) P. 441, Num. 5. [This decision is also found, as Decisio XXXIV, in the *Decisiones S. Rotae Romanae, ad praedictas materias spectantes*, a Cl.D. Lanfranco Zacchia collectae, which form an appendix to Horst's folio-editions of the *Quaestiones Medico-legales*. Lanfranco Zacchias (16??-1685) was a grandson of Paolo Zacchias. Unfortunately, his collection is not comprehensive.]
6. Galenus. *Commentarius 2. in Hippocratis Prorrheticum I*, textus 60(?) (In Kuehn's ed. it is 94, in Kuehn's ed. of Hippocrates, it is 92; see Kuehn, XVI, 696.)
7. Plato. *Sophistes*, cap. 15.
8. Budaeus (Guillaume Budé, 1467-1540). *Annotationes in XXIV pandectarum libros* (1508), in *Digesta*, Liber. 21, tit. 1: de Aedilitio Edicto, et redhibitione, et quanti minoris, lex. 4.
9. Plautus. *Bacchides* ("The Two Bacchises"), Act V, scene 1, Nixon, P., transl. Loeb Classical Library.
10. Terentius. *Heautontimorumenos* ("The Self-Tormentor"), Act 5, Scene 1. Sargeant, J., transl., Loeb Classical Li-

- brary.
11. Decius (Filippo Decio, 1454-1536). *In legum Humanitatis*, Codex. Liber 6, Tit. 26. De Impuberum & aliis substitutionibus, lex 9, Num. 1, Gloss in Institutiones, Liber 2, tit. 12: Quibus est permissum facere testamentum, Praeterea, on the word Furiosi.
 - 11a. Cf. Zacchias, II, 1, 9 De melancholicis, Num. 13/14.
 12. Thesaurus (Gasparo Antonio Tesauro, 15??-16??). *Decisiones Pedimontanae*, 1610. Decisio 92, Num. 2.
 13. Bartolus (Bartolo da Sassoferrato, 1314-1357). *Tractatus de testimoniis*, Num. 98. *Opera*, 1552, vol. 3, p. 178.
 14. Thesaurus (as in note 12). Num. 4.
 15. Aetius. Sermo 6, cap. 22. *Tetrabiblos*, 1535, vol. 1, p. 249.
 16. Menochius (Giacomo Menochio, 1532-1607). *De Arbitrariis Judicium Quaestionibus et Causis, Centuriae sex*, 1569. Liber 2, cas. 529, Num. 2 ff.; pp. 920-21, ed. of 1691.
 - 16a. Erasmus of Rotterdam. *Adagia*, 1515. Chil. IIII, Cent. IIII, 69, pp. 976-77, ed. of 1612.
 17. Fracastorius (Ghirolamo Fracastoro, 1483-1553). *Turrius sive de intellectione dialogus*, Liber 1. *Opera omnia* 1573 & 1584, fol. 127ro; *Opera*, 1555, fol. 173ro.
 18. Tiraquellus (Andre Tiraqueau, 1488-1558). *De Legibus Connubialibus*, 1513; after 1524 the title continues: *et jure maritali*, Gloss. 5, Num. 24.
 19. Corsettus (Antonio Corsettus, 14??-1503). *Singularia*, Num. 2, on the word Testamentum, 1477.
 20. Galenus, Liber 4, de praesagitione ex pulsibus, cap. 8; IX, 407 Kuehn.
 - 20a. Galenus, Liber 2. De symptomatum causis, cap. 7; VII, 200-01, Kuehn.
 21. Decius (cf. note 11). *In legem Furiosum*. Codex, Liber 6, tit. 22. De his qui testamenta facere possunt, vel. non, lex 9, Num. 8 & 11.
 22. *Sacrae Rotae Romanae decisiones novissimae*, decisio 384, Num. 5, pars 1, tom. 1. Decisio XI in Lanfranco Zacchia's collection, which is not necessarily identical with the Decisio 384 here mentioned, in any case says the same thing: Romana Haereditatis, Veneris 15. Novembris 1592. Coram R. P. D. Penia. Num. 5.
 - 22a. The above is found also in *Melitensis Testamenti* (see note 5).
 23. *Rota*, as in note 22, dec. 134, Num. 1, pars 2.
 24. *Rota*, as above, decis. 107, Num. 29, pars 2.
 25. *Lex Pupillum, Digesta*, Liber 50, tit. 17. De (diversis) regulis juris antiqui, lex 111.
 26. Zabarellus (probably Francesco Zabarella, 1360-1417). *De homicidiis casualibus & voluntariis*, cap. si furiosis, Num. 3.
 27. Angelus a Gambellionibus (Angelo Gambigliani, 15th cent.). Quoted by Zilettus, (Giovanni Battista Ziletti, 16th cent.). *Consilia*, cons. 95, Num. 1.
 28. Menochius (cf. note 16). *Consiliorum sive Responsorum*, liber primus, consilium 28, Num. 13, vol. 1, p. 146, ed. of 1628; 1st ed., 1572.
 29. Bartolus (cf. note 13). *Tractatus de Testimoniis*, Num. 98.
 - 29a. Horatius. *Sermonum*, Liber secundus, sermo 3, line 248.
 30. Paulus Aegineta. *Medicina*, Liber 3, cap. 11, p. 146, ed. of 1551.
 31. Alexander (Alessandro Tartagna, 1424-1477). *In legem Cum servus*, para. constat, *Digesta*, Liber 30. Liber 1: De legatis et fidei commissis, lex 39, para. 7. See also *In legem si cum dotem*, para. si maritus. *Digesta*, Liber 24, tit. 3: soluto matrimonio, lex 3, para. 7.
 32. Grammaticus (Tommaso Grammatico, 1473-1556). *Decisiones*, 1547, Decisio 2, Num. 1.
 33. Caevulus (Geronimo de Cevallos, 16th cent.). *Quaestiones Communes contra Communes* (Speculum aureum opinionum communium contra communes?), in the preface, Num. 98 (1602).
 34. Galenus. Liber 3, de locis affectis, cap. 4.
 - 34a. Galenus, Liber 3, de Placitis Hippocratis & Platonis, cap. 4 (V, 310-11, Kuehn).
 35. Plautus. *Mostellaria* ("The Haunted House"). Act V, scene 1, line 1110. Nixon, P., transl. Loeb Classical Library.

36. Plautus, *Poenulus* ("The Little Carthaginian"), Act I, scene 2, lines 291-2. Nixon, P., transl. Loeb Classical Library.
37. Plautus, *Miles Gloriosus* ("The Braggart Warrior"), Act II, scene 2, lines 235-36.
38. Joseph Ludovicus (Giuseppe Ludovisi, 15??-16??). *Decisio Perusina prima*, Num. 14, pars I. In: *Decisionem seu Diffinitionum causarum perusinarum et provinciae Umbriae pars prima*, 1572.
39. *Decisiones Sacrae Rotae Romanae coram J. Cavalerio*, 1629. Romana Donatio de Gualteruciis, 1622, Monday, December 12, coram Cavalerio [Decisio 50 in Lanfranco Zacchias's collection, Num. 5].
40. Galenus, *De locis affectis*, Liber 3, cap. 4 (VIII, 460, Kuehn).
41. Forestus (Pieter van Foreest, 1521-1597). *Observationum et curationum medicinalium libri tres*, 1590, Liber 10, observ. 1, p. 13.
42. Plinius. *Naturalis historia*, Liber 7, cap. 24. Loeb edition, vol. 2, p. 564. Actually, Zacchias is not quoting Pliny, but rather Caius Iulius Solinus, *Polyhistor*, cap. 1, para. 104, ed. of 1777, p. 34. The reason for his mistake was that he took the quotation at second hand from Menochius; see note 44.
43. Lucretius. *De rerum natura*, Liber 6, lines 1213-14. Rouse, W. H. D., transl., Loeb Classical Library.
44. Menochius (as in note 16), Liber 2, cas. 26, Num. 5, p. 170 of ed. of 1691.
45. Menochius, as above. This refers to note 44, but not merely to Num. 5 but to the entire Casus 26, the title of which is: Tempus quod sit, quo causatur oblivio, & quid in ea re a iudice observandum sit.
46. Menochius. *Ibid.*, Num. 3.
47. Seneca ("Rhetor"). In the preface to his book of Declamations, i.e., *Controversiae*, Liber 1, p. 51 in vol. of the Elzevir ed., 1639, of the work of his son, the philosopher Seneca.
48. Aristoteles. *Liber de Memoria & Reminiscens*, cap. 2.
49. Mascardus (Guiseppe Mascardi, 15??-1588). *De Probationibus*. Conclusiones probationum omnium, quae in utroque Foro quotidie versantur, 4th ed. 1619; 1st ed., 1584-1588, Conclusio 1122, vol. 3.
50. Averroes. *Ibidem*, i.e., as in note 48: *De Memoria et Reminiscens*, last chapter (Compendia librorum Aristotelis qui Parva Naturalia vocantur).
51. Plato. *Theaetetus*, cap. 34.
52. Forestus. As in note 41, Liber 10, Observ. 1 in the Scholion, p. 15.
53. Caevalus. Cf. note 33, preface to *Practicae Quaestiones Communes* (probably the same work as that quoted in note 33), Num. 94.
54. Menochius. As in note 16; as above (notes 44, 45, 46), same case (26), Num. 4.
55. Menochius. *Ibid.*, Num. 6.
56. Verallus (Paolo Emilio Verallo, 16th cent.). *Decisiones Aureae Causarum sacri Palatii apostolici*, 1589, decisio 279, Num. 7, pars 3.
57. *Lex Discretis*. Codex, Liber 6, tit. 22: qui testamenta facere possunt, vel non (the text says wrongly: de testamentis, that is: tit. 23) lex 10. para. 1 Sin autem.
58. As in note 57, gloss there on the word "raro."
59. Andreas Laurentius (Andre Du Laurens, 1558-1609). *Historia Anatomica Humani Corporis*, Liber 11, cap. 13: De aure interna, quae verum auditus est organum Controversiae, quaestio 11, De mira aurium & palati, linguae ac laryngis sympathia (1600, p. 430). (In the 1st ed., 1593, *Opera anatomica* . . . it is Liber 4, cap. 18, q. 26, pp. 745-46.)
60. Hieronymus Fabricius (Girolamo Fabrici d'Acquapendente, 1533-1619). *De aure, Auditus Organo*, pars 1: De dissectione et historia auris, cap. 4: De Membrana Tympano appellata (1600, pp. 4-5, p. 142 in ed. of 1614).
61. Vallesius (Francisco Valles Covarrubias, 1524-1592). *Liber de sacra philosophia sive de iis quae scripta sunt physice in libris sanctis*, 1558, cap. 3.
62. Bartolus. Cf. note 13. *Tractatus de Testimoniis*, Num. 93, *Opera*, 1552, vol. 2, p. 177.
63. Bartolus. *Ibid.*, Num. 97.

64. Cujacius (Jacques de Cujas, 1522-1590). *Notationes ad Justiniani libros IV Institutionum*, Liber 2, tit. 10: de Testamentis ordinandis, vol. 1 of his *Opera* of 1577. Or p. 96 in vol. 1 of his *Opera omnia* of 1658: Notae in Librum 2. Institutionum Justiniani. De testamentis ordinandis, cap. 10, para. 6.
65. Vantius (Sebastiano Vanti, 16. Cent.) *Tractatus de nullitatibus processuum ac sententiarum* . . . 1554. Tit. de nullitatibus ex defectu inhabilitatis Num. 25.
66. Farinacius (Prospero Farinacci, 1544-1618). *Praxis et Theorica Criminalis*, 1597-1610, pars 2, vol. 1, q. 98.
67. See note 63.
68. *Lex Discretis*. Cf. note 57.
69. *Lex Qui in Potestate*, Digesta, Liber. 28, tit. 1: (de Testamentis &) qui testamenta facere possunt, et quemadmodum testamenta fiant, lex 6.
70. As in note 69, para. I, surdus.
71. Decius. Cf. note 11. *In legem Discretis* (quoted in notes 69 and 57), Num. 1.
72. Nepos a Montalbano (Nepos de Montauban, 13th cent.). *Tractatus exceptionum qui dicitur, liber fugitivus*, 1512, artic. 20, Num. 10.
73. Baldus (Baldo degli Ubaldi, 1319 or 1327-1400). *In lege prima*, in 2 col. Codex, Liber 1, tit. 2: de Sacrosantis Ecclesiis et de rebus et privilegii earum, in repetitionibus (i.e., in his Repetitiones).
74. Abbas (Panormitanus or Niccolo de Tedeschi, 1389-1466). In cap. cum apud. Num. 6, de sponsalibus(?).
75. Jason (Jason Mainus, 1435-1519). *In legem Mutum*, Digesta, Liber 29, tit. 2. De acquirenda vel omittenda haereditate, lex 5, Num. 4.
76. Brunellus (Jean Bruneau or Brunel, 14??-15??). *Tractatus de matrimoniis & sponsalibus*, 1521, conclus. 14, Num. 6.
77. Ibid. Num. 8.
78. Galenus. Liber 6, de locis affectis, cap. 5; VIII, 419-20, Kuehn.
79. Mascardus. As in note 49, conclusio 1358, Num. 24, vol. 3.
80. *Lex qui id quod. Digesta*, Liber 39, tit. 5. De donationibus, lex 33.
81. As in note 80, para 2, mutus.
82. Maranta (Roberto Maranta, 14??-1530). *Singularia et iuris notabilia* (1616), on the word Mutus.
83. Valescus (Valesco de Taranta, 13??-14??). *Philonium* (begun 1418), lib. 2, cap. 50. De nocumentis aurium: et primo de surditate. Clarificatio. Fol. 69ro, ed. of "1401" (1501); fol. 44ro ed. of 1521; fol. 87ro ed. of 1535; 1st printed., 1478.